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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

IN THE MATTER OF THE FORMAL
COMPLAINT OF ROGER AND DARLENE
CHANTEL,

COMPLAINANTS,

vs.

MOHAVE ELECTRIC COOPERATIVE, INC.,

RESPONDENT.

DOCKET NO. E-01750A-09-0149

PROCEDURAL ORDER

BY THE COMMISSION:

Background

On March 24, 2009, Roger and Darlene Chantel filed a formal complaint ("Complaint") with the Arizona Corporation Commission ("Commission") against Mohave Electric Cooperative, Inc. ("MEC" or "Company"). MEC filed its Response to Formal Complaint and Motion to Dismiss with the Commission on April 10, 2009.

In their Complaint, the Chantels alleged an MEC electric distribution line running across their property was sagging dangerously low, but when Mr. Chantel complained to MEC about it, MEC told him the 14,000 Kv line conformed to industry standards and refused to fix it. Around this same time, Mr. Chantel learned MEC did not have a recorded right-of-way for its line. When he brought it to MEC's attention, MEC allegedly said that if he wanted the line off his property, he could pay to have it moved.

Concerned about the line's safety, Mr. Chantel decided to build "a functional art work that would protect us and our property from the dangers of these unsafe electric lines..."¹ In mid-2008, Mr. Chantel began constructing a 6,200 square-foot building directly beneath the still-energized line.

¹ Complaint, page 1.

1 The Mohave County Planning and Zoning Department ("Mohave County") advised Mr. Chantel that
2 he did not have a building permit and he could not get one because of the building's unsafe location.
3 Mohave County directed Mr. Chantel to stop construction and dismantle the building, but Mr.
4 Chantel did not comply. On September 12, 2008, Mohave County instructed MEC to de-energize the
5 line. MEC stated it could not refuse Mohave County's order to de-energize the line, but the line
6 serving the Chantels also provided electricity to a nearby railroad signal device, so MEC had to
7 quickly construct an alternate line to the railroad circumventing the Chantels' property. MEC
8 complied with Mohave County's order to de-energize the line on September 16, 2008, leaving the
9 Chantels without electricity. MEC claimed it was the Chantels' actions that created the need to re-
10 route the line and the Company billed the Chantels \$12,135.09 for construction costs.

11 Mr. Chantel claimed he had a medical condition necessitating his use of a C-Pap breathing
12 machine and he needed continuous electricity to operate it. He alleged MEC's actions violated
13 Commission regulations prohibiting a utility from by shutting off power to customers with serious
14 health issues. MEC responded that the regulations cited by Mr. Chantel do not apply because he did
15 not notify the Company he had a medical condition requiring continuous electricity until after service
16 had been stopped.

17 The Chantels filed an informal complaint with the Commission on September 30, 2008. On
18 November 5, 2008, Commission Staff issued a letter detailing the results of Staff's investigation and
19 advising the Chantels that their informal complaint would be closed.

20 The Chantels renewed their claims by formal Complaint and alleged that either MEC had
21 misrepresented the facts to the Commission, "or there are some employees within the ACC that are
22 conspiring with MEC's management to protect them from assuming their responsibility of correcting
23 the issues in this complaint."² The Chantels requested that the Commission order MEC to reinstate
24 electric service to their home. They also requested that the Commission void MEC's \$12,000 bill for
25 re-routing the line, and instead require MEC to pay the Chantels for the Company's use of the
26 property without a recorded easement. Mr. Chantel stated that, alternatively, the Commission "can
27

28 ² Complaint, page 6.

1 claim it does not have jurisdiction or it can create some other type of ruling. This will support my
2 claim that we can cancel our membership in the Cooperative and move forward with a multimillion
3 dollar law suit against all parties that are responsible for these injustices.”³

4 By a Procedural Order docketed July 28, 2009, hearing was set for January 20, 2010.

5 On December 10, 2009, the Chantels (through counsel) filed a Motion to Recess Formal
6 Complaint (“Motion to Recess”), relating they had filed a complaint in Mohave County Superior
7 Court against MEC on November 20, 2009, asserting various civil claims and seeking damages.⁴
8 The Chantels requested a stay of their Complaint before the Commission pending the resolution of
9 the Superior Court action “because the Superior Court Complaint raises issues and seeks relief that
10 cannot be addressed in the ACC. For the sake of judicial efficiency, Complainants seek to resolve all
11 the Superior Court Complaint issues first. The resolution of these issues in Superior Court may make
12 the Formal Complaint moot.”⁵ On December 15, 2009, Mr. Chantel wrote a letter to the Commission
13 reasserting the claims in his Complaint and alleging that MEC, MEC’s counsel, and Arizona Electric
14 Power Cooperative, Inc.⁶ were corrupt and charged that Commission Staff was covering up
15 information about MEC’s unsafe lines. Mr. Chantel stated he had directed his attorney to file the
16 Motion to Recess, which would give the Commission enough time to investigate his allegations.

17 On December 21, 2009, MEC filed its Response to Complainants’ Motion to Recess Formal
18 Complaint. MEC objected to the Motion to Recess, asserting that the Chantels did not have a
19 legitimate reason for their request and were simply forum shopping. MEC argued the Chantels must
20 exhaust all administrative remedies with the Commission before they could proceed with their civil
21 claims in Superior Court.

22 A Procedural Order docketed December 24, 2009, granted the Motion to Recess and directed
23 the Chantels to file Quarterly Updates regarding the civil action’s status beginning March 31, 2010.

24 The civil action was still pending when Mr. Chantel filed a letter with the Commission on
25

26 ³ Compliant, page 5.

27 ⁴ In July 2009, the Chantels hired legal counsel to represent them before the Commission and in Superior Court.

28 ⁵ Motion to Recess, page 2.

⁶ MEC is a member of Arizona Electric Power Cooperative, Inc., along with Duncan Valley Electric Cooperative, Graham County Electric Cooperative, Sulphur Springs Valley Electric Cooperative and Trico Electric Cooperative.

1 February 11, 2011, again alleging that MEC was misrepresenting the facts and objecting to MEC's
2 insistence that the Chantels pay for the lines the Company installed to circumvent the Chantels'
3 property, and he demanded that MEC reinstate electrical service to his home. Mr. Chantel claimed
4 that the Commission had jurisdiction over these issues, writing:

5 I am asking you to reexamine these issues. If for some reason you feel that the ACC
6 cannot issue an order to reconnect my electricity or you cannot request MEC to remove
7 the unsafe lines and poles from my property, I am asking you to draft a letter stating that
8 this is out of the ACC's jurisdiction. Everyone involved in this case needs to know if
these issues fall within the ACC's jurisdiction or if the ACC wants them to fall within the
Court's jurisdiction.

9 MEC docketed a response to this letter on February 23, 2011, noting it was the Chantels'
10 choice to suspend Commission consideration of the Complaint until the civil action was finished
11 instead of exhausting their administrative remedies first. MEC requested that the Commission take
12 no action on the Complaint while the Chantels' civil suit is pending.

13 On April 4, 2011, Mr. Chantel wrote to the Commission claiming that MEC had violated
14 Commission rules by abandoning the line across his property without first notifying the Commission
15 and requested that the Commission issue an order directing MEC to remove it.

16 In their Quarterly Update filed June 28, 2012,⁷ the Chantels stated that Mohave County
17 Superior Court issued an order on May 31, 2012, granting MEC's summary judgment motion and
18 dismissing the case.⁸ The Chantels filed an appeal with the Arizona Court of Appeals on June 13,
19 2012. The Chantels filed their Opening Brief on August 30, 2012, and MEC filed its Answering
20 Brief on October 15, 2012.

21 On August 8, 2012, Mr. Chantel filed a letter with the Commission reiterating allegations that
22 MEC violated Commission regulations when it abandoned the electric lines crossing his property, but
23 he believed that the Commission "is not putting any effort forward to help me." Mr. Chantel
24 requested copies of all documents and names of Commission Staff who have talked with MEC
25

26 ⁷ On May 25, 2011, the Chantels' counsel filed an Application to Withdraw as Counsel of Record and a Procedural Order
27 granting the application was docketed on June 20, 2011. The Chantels have continued to file the Quarterly Updates as
directed. The Chantels' attorney also withdrew as counsel in the civil action.

28 ⁸ A copy of the Superior Court Order is attached as Exhibit B to MEC's Response to Complainant's August Letters,
docketed August 24, 2012.

1 counsel and employees. Mr. Chantel stated that this information “may be cause for not filing a
2 Motion to Compel with the Appeals Court.”⁹

3 Mr. Chantel filed another letter on August 21, 2012, requesting that the Commission issue a
4 notice directing MEC to show cause why the Company will not re-establish his service. Mr. Chantel
5 claimed that he has post-traumatic stress, and his interactions with MEC have added to his stress
6 levels. Mr. Chantel stated again that without continuous electricity, he cannot run his C-Pap machine
7 and asserted that Commission regulations require MEC to provide electricity to his home because of
8 his medical conditions.

9 Also on August 21, 2012, the Arizona Attorney General’s Office docketed a copy of a letter
10 responding to an August 1, 2012, letter received from Mr. Chantel, in which he asked the Attorney
11 General to investigate the Commission’s failure to enforce certain regulations.¹⁰ The Assistant
12 Attorney General responding to the letter stated that he had reviewed Mr. Chantel’s letter, the
13 documents filed in the Complaint, and spoken with Commission Staff about the Complaint. The
14 Assistant Attorney General concluded that enforcement of regulations concerning abandonment of
15 service lines is within the Commission’s discretion and concluded there was no legal basis for
16 conducting a formal investigation of the Commission.

17 MEC filed a Response to Complainant’s August Letters on August 24, 2012. The Company
18 again explained the safety concerns that ultimately resulted in Mohave County’s order to de-energize
19 the lines crossing the Chantels’ property, and outlined the conditions the Chantels must meet before
20 MEC can reinstate service. MEC also argued that, contrary to Mr. Chantel’s assertions, Commission
21 rules prohibiting termination of service due to a medical condition do not apply in this case. MEC
22 challenged Mr. Chantel’s claims that the Commission is not actively addressing his concerns,
23 pointing out again that the stay on the Complaint was granted at the Chantels’ request.

24 On August 30, 2012, the Chantels filed a Response to Mohave Electric Cooperative’s
25 Response to Complainant’s August Letters (“Reply”) stating, “[t]he conflict is about MEC’s right to
26 use my property, reinstatement of Complainant’s electricity and filing application with A.C.C. for

27 ⁹ Chantel letter dated August 8, 2012, page 2.

28 ¹⁰ The Chantels did not file a copy of this letter with the Commission.

1 abandonment of lines and poles.”¹¹ Mr. Chantel acknowledged the stay on the Complaint was
2 granted at his request, but the reason for it was because of the large number of issues outside the
3 Commission’s jurisdiction. Mr. Chantel claimed that the Commission has authority over the issues
4 regarding reinstatement of electricity and the Commission should issue an order granting the
5 Chantels’ requested relief.

6 On September 18, 2012, Mr. Chantel docketed a letter responding to correspondence from
7 Staff dated September 4, 2012,¹² requesting that the Commission “give MEC notice” about the
8 Company’s violations of Commission regulations regarding unsafe lines, abandonment of lines, and
9 on the prohibition against terminating service when the customer has a severe medical condition.

10 Mr. Chantel filed another letter with the Commission on October 18, 2012, stating:

11 It appears that the Utility Director does not intend to take any action to prevent harm to
12 my life, so I am asking the Commissioners to place the request [for reinstatement of
13 service and application for abandonment of lines] on their calendar for consideration. I
am also asking the Commission to promptly publish their decision on this matter, so
everyone can move forward.¹³

14 **Discussion**

15 In their Motion to Recess, the Chantels acknowledged that their Complaint involved some
16 issues within the Commission’s jurisdiction, but “for the sake of judicial efficiency” they wanted to
17 pursue their civil claims before addressing their administrative claims. Their Motion to Recess was
18 granted, effectively suspending the Chantels’ Complaint—including any claims raised in the
19 Complaint that may fall under the Commission’s exclusive jurisdiction—and no further action would
20 be taken on the Complaint until the stay is lifted.

21 In spite of this stay, and even though a hearing on the Complaint has yet to be held, Mr.
22 Chantel continues to file letters asking the Commission to act the on the Chantels’ charges based on
23 Commission regulations. However, none of these letters expressly request that the stay be lifted.

24 In his Reply filed on August 30, 2012, Mr. Chantel stated that his lawsuit in Superior Court
25 was intended to address his civil claims, but his claims about reinstating his electric service are issues

26 ¹¹ Reply, page 1.

27 ¹² The September 4, 2012, letter was not docketed. Staff is not a party to the Complaint and at the time the stay was
granted, Staff had not been asked to participate as a witness in the matter.

28 ¹³ Chantel letter docketed October 18, 2012, page 2.

1 for the Commission to decide. This may be true, but it was also true when the Chantels filed their
2 Motion to Recess, affirmatively choosing to set aside their Complaint in favor of the lawsuit. The
3 Chantels have appealed the Mohave County Superior Court's order, delaying final disposition on the
4 Chantels' civil action. As such, the stay on their Complaint is still in effect. If the Chantels want the
5 stay on their Complaint lifted before final disposition of their civil suit, they must specifically request
6 it in a motion showing good cause why the Commission should grant their request.

7 Additionally, some of Mr. Chantels' letters assert that MEC did not comply with Commission
8 regulations when it allegedly abandoned the line crossing his property. The Chantels did not raise
9 this allegation in their Complaint, they have not filed a request to amend the Complaint to include the
10 abandonment allegation, and it does not appear that the Chantels have filed a separate complaint with
11 the Commission on this issue. If the Chantels want to include the abandonment allegation as part of
12 this Complaint, they must file a motion to amend their Complaint after the stay has been lifted.

13 IT IS THEREFORE ORDERED that the stay on the Chantels' Complaint granted by
14 Procedural Order docketed December 24, 2009, is still in effect.

15 IT IS FURTHER ORDERED that unless and until the Chantels file a motion showing good
16 cause why the stay should be lifted before final disposition of their civil suit, and unless and until the
17 motion is granted, Commission action on the Complaint will remain suspended.

18 IT IS FURTHER ORDERED that the Chantels shall continue to file Quarterly Updates
19 regarding the status of the appeal on their civil action.

20 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
21 of the Arizona Supreme Court and A.R.S. §40-243 with respect to practice of law and admission *pro*
22 *hac vice*.

23 ...

24 ...

25 ...

26 ...

1 IT IS FURTHER ORDERED that that the Administrative Law Judge may rescind, alter,
2 amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by
3 ruling at hearing.

4 DATED this 29th day of October, 2012.

5
6 
7 BELINDA A. MARTIN
8 ADMINISTRATIVE LAW JUDGE

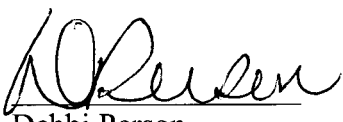
9 Copies of the foregoing mailed
10 this 29th day of October, 2012 to:

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